

## ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT SPECIAL EDUCATION OPERATING PROCEDURES

Ector County Independent School District Board Policy along with these *Special Education Operating Procedures* constitute the Policies and Procedures of Ector County Independent School District, designed to be consistent with the State policies and procedures developed pursuant to the IDEA. Ector County Independent School District *Special Education Operating Procedures* are not to be for the purpose of creating a requirement that is not otherwise imposed by the Individuals with Disabilities Education Improvement Act (“IDEA”), together with its implementing federal regulations, state statutes and rules, as they shall from time to time be amended, and shall not be construed to create a higher standard than that established by IDEA. These *Special Education Operating Procedures* will be posted on Ector County Independent School District website. These *Special Education Operating Procedures* should be interpreted consistent with the IDEA. Ector County Independent School District *Special Education Operating Procedures* are reviewed and updated, as needed, on at least an annual basis. Ector County Independent School District will make timely changes to policies and procedures in response to IDEA amendments, regulatory or rule changes, changes to state policy, or new legal interpretation as are necessary to bring Ector County Independent School District into compliance with the requirements of IDEA. Ector County Independent School District maintains systems to ensure that all students with disabilities residing in the District, including students with disabilities attending non-public schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and provided a free appropriate public education. Ector County Independent School District maintains systems to ensure that students with disabilities and their parents are afforded the procedural safeguards required under the IDEA (and its implementing federal regulations, state statutes and rules) including with respect to the confidentiality of records and personally identifiable information.

It is the policy of Ector County Independent School District to treat with dignity and respect all students, including students with disabilities who receive special education and related services. Any behavior management technique and/or discipline management practice will be implemented in such a way as to protect the health and safety of a student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive a student of basic human necessities. [The Legal Framework for the Child-Centered Process](#), Board Policy, the Student Code of Conduct and these Operating Procedures.

These procedures apply to all Ector County Independent School District employees, volunteers, and independent contractors; the procedures apply to peace officers only if the peace officer is employed or commissioned by Ector County Independent School District, or if the peace officer provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.<sup>1</sup>

**PRACTICE GUIDE—Data concerning the frequency and effectiveness of any behavior management technique or intervention, as well as data concerning the frequency and circumstances involving the use of restraint, may be reviewed by an eligible student’s ARD committee at regular intervals to determine whether such techniques are effective, or whether the frequency suggests a need for further evaluation, or changes to the student’s IEP or placement.**

Ector County Independent School District prohibits the use of “aversive techniques or interventions” by Ector County Independent School District employees, volunteers, and independent contractors.

<sup>1</sup> TEC 37.0021(h); 19 TAC 89.1053(l)

A Ector County Independent School District employee or volunteer or an independent contractor of Ector County Independent School District may not apply an aversive technique, or by authorization, order, or consent, cause an aversive technique to be applied to a student.<sup>2</sup>

Aversive techniques or interventions are those that are intended to reduce the likelihood of a behavior reoccurring by intentionally inflicting on a student significant physical or emotional discomfort or pain.<sup>3</sup> Prohibited aversive techniques include a technique or intervention that:

- Is designed to or likely to cause physical pain, other than an intervention or technique permitted under the use of corporal punishment;<sup>4</sup>
- Is designed to or likely to cause physical pain through the use of electric shock or any procedure that involves the use of pressure points or joint locks;<sup>5</sup>
- Involves the directed release of a noxious, toxic, or otherwise unpleasant spray, mist, or substance near the student's face;<sup>6</sup>
- Denies adequate sleep, air, food, water, shelter, bedding, physical comfort, supervision, or access to a restroom facility;<sup>7</sup>
- Ridicules or demeans the student in a manner that adversely affects or endangers the learning or mental health of the student or constitutes verbal abuse;<sup>8</sup>
- Employs a device, material, or object that simultaneously immobilizes all four extremities, including any procedure that results in such immobilization known as prone or supine floor restraint;<sup>9</sup>
- Impairs the student's breathing, including any procedure that involves:
  - applying pressure to the student's torso or neck; or
  - obstructing the student's airway, including placing an object in, on, or over the student's mouth or nose or placing a bag, cover, or mask over the student's face;<sup>10</sup>
- Restricts the student's circulation;<sup>11</sup>
- Secures the student to a stationary object while the student is in a sitting or standing position;<sup>12</sup>
- Inhibits, reduces, or hinders the student's ability to communicate;<sup>13</sup>
- Involves the use of a chemical restraint;<sup>14</sup>
- Constitutes a use of time-out that precludes the student from being able to be involved in and progress appropriately in the required curriculum and, if applicable, toward the annual goals included in the student's individualized education program (IEP), including isolating the student by the use of physical barriers;<sup>15</sup> or

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<sup>2</sup> TEC 37.0023(b)

<sup>3</sup> TEC 37.0023(a)

<sup>4</sup> TEC 37.0023(a)(1); TEC 37.0011

<sup>5</sup> TEC 37.0023(a)(2); TEC 37.0011

<sup>6</sup> TEC 37.0023(a)(3)

<sup>7</sup> TEC 37.0023(a)(4)

<sup>8</sup> TEC 37.0023(a)(5)

<sup>9</sup> TEC 37.0023(a)(6)

<sup>10</sup> TEC 37.0023(a)(7)

<sup>11</sup> TEC 37.0023(a)(8)

<sup>12</sup> TEC 37.0023(a)(9)

<sup>13</sup> TEC 37.0023(a)(10)

<sup>14</sup> TEC 37.0023(a)(11)

<sup>15</sup> TEC 37.0023(a)(12)

- Deprives the student of the use of one or more of the student’s senses, except that this aversive technique may be used if the technique is executed in a manner that:
  - Does not cause the student discomfort or pain; or
  - Complies with the student’s IEP or behavior intervention plan.<sup>16</sup>

Nothing in this section may be construed to prohibit a teacher from removing a student from class under Texas Education Code §37.002.<sup>17</sup>

## **CONFINEMENT**

### ***What is confinement and when is it permitted?***

As indicated above, isolating the student by the use of physical barriers is considered an aversive technique and is prohibited. A student with a disability, who receives special education services, must not be confined in a locked box, locked closet, or other specially-designed locked space as either a discipline management practice or a behavior management technique.<sup>18</sup> This does not prohibit a student’s locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if the student possesses a weapon, as described under TEC §37.007(a)(1), and confinement is necessary to prevent the student from causing bodily harm to the student or another person.<sup>19</sup>

## **SECLUSION**

### ***What constitutes “seclusion”?***

"Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

- (A) is designed solely to seclude a person; and
- (B) contains less than 50 square feet of space.<sup>20</sup>

A school district employee or volunteer or an independent contractor of Ector County Independent School District may not place a student in seclusion.<sup>21</sup>

## **RESTRAINT**

### ***What constitutes “restraint”?***

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<sup>16</sup> TEC 37.0023(a)(13); TEC 37.0023(c)

<sup>17</sup> TEC 37.0023(d)

<sup>18</sup> TEC 37.0021(a)

<sup>19</sup> TEC 37.0021(f)

<sup>20</sup> TEC 37.0021(b)(2)

<sup>21</sup> TEC 37.0021(c)

“Restraint” is the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.<sup>22</sup> Restraint does not include: physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;<sup>23</sup> limited physical contact with a student to promote safety (e.g., holding a student’s hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;<sup>24</sup> limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors;<sup>25</sup> or seat belts and other safety equipment used to secure students during transportation.<sup>26</sup>

### ***When may the District use restraint?***

A Ector County Independent School District employee, volunteer, or independent contractor may use restraint only in an emergency situation, as described in these Procedures<sup>27</sup> and the use of restraint must be limited to the use of such reasonable force as is necessary to address the emergency;<sup>28</sup> restraint must be implemented in such a way as to protect the health and safety of the student and others;<sup>29</sup> restraint must not deprive the student of basic human necessities;<sup>30</sup> and restraint must be discontinued at the point at which the emergency no longer exists.<sup>31</sup>

Behavior that results in the rare use of restraint -- that poses a threat of imminent serious physical harm to the student or others or property -- is not limited to students with disabilities, students with a particular disability, or specific groups of students (e.g., gender, race, national origin, limited English proficiency, etc.) without disabilities. Thus, Ector County Independent School District policies or procedures that address the use of restraint or seclusion, including assessment and prevention strategies, apply to all students including students with disabilities.<sup>32</sup> Restraint need not be included in a student’s individualized education program (IEP) or as part of a behavior intervention plan (BIP) for school employees, volunteers, or independent contractors to use restraint.<sup>33</sup>

**Practice Guide— Restraint should never be used as a punishment or disciplinary consequence but should instead only be used as a means of keeping the student or valuable property safe during an emergency situation. Restraint need not be included in a student’s IEP or as part of the BIP for restraint to be utilized.**

<sup>22</sup> 19 TEC 37.0021(b)(1); 19 TAC 89.1053(b)(2)

<sup>23</sup> 19 TAC 89.1053(f)(1)

<sup>24</sup> 19 TAC 89.1053(f)(2)

<sup>25</sup> 19 TAC 89.1053(f)(3)

<sup>26</sup> 19 TAC 89.1053(f)(4)

<sup>27</sup> 19 TAC 89.1053(b)(1) & (c)

<sup>28</sup> 19 TAC 89.1053(c)(1)

<sup>29</sup> 19 TAC 89.1053(c)(3)

<sup>30</sup> 19 TAC 89.1053(c)(4)

<sup>31</sup> 19 TAC 89.1053(c)(2)

<sup>32</sup> <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>

<sup>33</sup> *Spring Branch ISD v. O.W.*, 961 F.3d 781, (5<sup>th</sup> Cir.—2020)

### ***What is an “emergency” situation that would permit District personnel to use restraint?***

An emergency situation is one in which a student’s behavior poses a threat of imminent, serious physical harm to the student or others, or a situation in which a student’s behavior poses a threat of imminent, serious property destruction.<sup>35</sup>

### ***Who must be notified regarding the use of restraint?***

On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint. Also, a good faith effort must be made to verbally notify the parent regarding the use of restraint on that day.<sup>36</sup>

### ***What documentation must be created concerning the use of restraint?***

Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint, by building principal.<sup>37</sup> Written documentation regarding the use of restraint must also be placed in the student’s special education eligibility folder in a timely manner by building principal so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student’s behavior on the student’s learning and/or the creation or revision of a BIP.<sup>38</sup>

This written notification to the parent and documentation to the student’s special education eligibility folder will be prepared by special education case manager and must include: (1) the name of the student; (2) name of the staff member or staff members administering the restraint; (3) date of the restraint and the time the restraint began and ended; (4) location of the restraint; (5) nature of the restraint; (6) a description of the activity in which the student was engaged immediately preceding the use of restraint; (7) the behavior that prompted the restraint; (8) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; (9) observation of the student at the end of the restraint; (10) information documenting parent contact and notification; and (11) if the student:

- has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or
- does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

<sup>34</sup> *Spring Branch ISD v. O.W.*, 961 F.3d 781, (5<sup>th</sup> Cir.—2020)

<sup>35</sup> 19 TAC 89.1053(b)(1)

<sup>36</sup> 19 TAC 89.1053(e)

<sup>37</sup> 19 TAC 89.1053(e)(3)

<sup>38</sup> 19 TAC 89.1053(e)(4)

These data reporting requirements apply to the use of restraint by **any** peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.<sup>40</sup>

Additionally, for students who are homeless or in substitute care, diagnostician or special education case manager must also provide notice to a student's educational decision-maker and caseworker regarding reports of restraint and/or seclusion.<sup>41</sup>

**PRACTICE GUIDE— When preparing the required written notification, the document should clearly identify the behavior of the emergency situation, rather than include a narrative that obscures facts that are necessary to understand the need for restraint.**

**PRACTICE GUIDE— When conducting an IEP meeting to consider the impact of the student's behavior on the student's learning and/or the creation or revision of a BIP, be sure to review any documentation of restraints in the special education folder for review by the ARD committee.**

Cumulative data regarding the use of restraint by Ector County Independent School District employees, volunteers, independent contractors, and by peace officers must be electronically reported by building principal through the Public Education Information Management System.<sup>42</sup>

**PRACTICE GUIDE— Multiple uses within the same classroom, or multiple uses by the same individual, may indicate the need for a functional behavior assessment, other review or, if appropriate, development of interventions to address the emergency situations.**

### ***How does the District provide training concerning the use of restraint?***

A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.<sup>43</sup> Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.<sup>44</sup> All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of

<sup>39</sup> 19 TAC 89.1053(e)(5)

<sup>40</sup> 19 TAC 89.1053(l)

<sup>41</sup> TEC 25.007(b)(10)(F)

<sup>42</sup> TEC 37.0021(i); 19 TAC 89.1053(f) & (k)

<sup>43</sup> 19 TAC 89.1053(d)(1)

<sup>44</sup> 19 TAC 89.1053(d)(3)

restraint.<sup>45</sup> Further, Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.<sup>46</sup>

## **TIME-OUT**

### ***What constitutes “time-out”?***

“Time-out” means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting that is not locked and from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.<sup>47</sup> “Time-out” includes behavior management techniques that result in the student’s separation from other students while remaining in the same classroom without regard to a student’s choice of activities during the period of separation.<sup>48</sup>

### ***What limitations does the District require concerning the use of “time-out”?***

A Ector County Independent School District employee, volunteer, or independent contractor may use time-out with the following limitations:

- Physical force or threat of physical force must not be used to place a student in time-out;<sup>49</sup>
- Time-out must only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student’s IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior;<sup>50</sup> and
- Use of time-out must not be implemented in a fashion that precludes the ability of a student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student’s IEP.<sup>51</sup>

### ***How does the District provide training concerning the use of time-out?***

General or special education personnel who implement time-out based on requirements established in a student’s IEP and/or BIP must be trained in the use of time-out.<sup>52</sup> Newly identified personnel called upon to implement time-out based on requirements established in a student’s IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.<sup>53</sup> Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of a student to be involved in and progress in the general curriculum

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<sup>45</sup> 19 TAC 89.1053(d)(4)

<sup>46</sup> 19 TAC 89.1053(d)(2)

<sup>47</sup> TEC 37.0021(b)(3); 19 TAC 89.1053(b)(3)

<sup>48</sup> *Spring Branch ISD v. O.W.*, 961 F.3d 781 (5<sup>th</sup> Cir.—2020)

<sup>49</sup> 19 TAC 89.1053(b)(3); 89.1053(g)(1)

<sup>50</sup> 19 TAC 89.1053(b)(3); 89.1053(g)(2); *Spring Branch ISD v. O.W.*, 961 F.3d 781 (5<sup>th</sup> Cir.—2020)

<sup>51</sup> 19 TAC 89.1053(b)(3); 89.1053(g)(3)

<sup>52</sup> 19 TAC 89.1053(h)(1)

<sup>53</sup> 19 TAC 89.1053(h)(2)

and advance appropriately toward attaining the annual goals specified in the student’s IEP.<sup>54</sup> All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.<sup>55</sup>

***What documentation does the District require concerning the use of time-out?***

Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in a student’s Individualized Education Program or Behavior Intervention Plan.<sup>56</sup> If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student’s behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.<sup>57</sup>

**PRACTICE GUIDE— Because time-out may only be used on a recurrent basis when it is included as part of student’s Behavior Intervention Plan (BIP), properly used and documented time-out would not be considered a removal from the student’s educational placement or counted toward the days of removal that constitute a DISCIPLINARY CHANGE OF PLACEMENT.**

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<sup>54</sup> 19 TAC 89.1053(h)(3)

<sup>55</sup> 19 TAC 89.1053(h)(4)

<sup>56</sup> 19 TAC 89.1053(h)(i)

<sup>57</sup> 19 TAC 89.1053(h)(i)